IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 378 of 2004 (S/B)

Date of decision: December, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? ( )

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 378 of 2004 (S/B)

1. State of Uttaranchal,
   Through Secretary, Horticulture & Food Processing,
   Civil Secretariat, Dehradun.
2. Director, Horticulture,
   Directorate of Horticulture & Food Processing,
   Uttaranchal, Udyan Bhawam, Chaubatia,
   Ranikhet, District Almora. …… Petitioners

Versus

1. Samual Haq S/o Sri P.A. Haqq,
   R/o Rohilla Lodge, Tallital,
   District Nainital.
2. Balwant Singh Khetwal,
   At present Food Processing Officer,
   Deputy Director Office, Nainital.
3. Sushil Chandra Dimra, Principal,
   Government Food Science Training Centre,
   Industrial Area, Kotdwara,
   District Pauri Garhwal.
4. Public Service Tribunal, Uttaranchal,
   Dehradun. ……. Respondents

Mr. J.P. Joshi, learned Standing Counsel of the petitioners.

Coram: Hon'ble V.S. Sirpurkar, C.J.
Hon'ble Rajesh Tandon, J.

Date: 10th December, 2004

(Per Hon'ble Rajesh Tandon, J.)

1. Heard Mr. J.P. Joshi, learned standing counsel appearing on behalf of the petitioners.

2. By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the judgment and order dated 24th February, 2004 passed by the Public Service Tribunal in claim petition No. 67 T/2002 Samual Haq Vs State & others.

3. Briefly stated, a petition under Section 4 of the U.P. Public Services (Tribunals) Act, 1976 was filed by the respondent No. 1 Samual Haq praying for quashing of the order dated 7th January, 1995,

by which the representation of the respondent No. 1 against the tentative seniority was rejected. In the meantime, final seniority list was also finalized.

4. According to the claim of respondent No. 1, some posts of Instructor (Cookery), Instructor (Bakery) in the scale of Rs. 1600-2660/- fell vacant in the establishment of the Directorate, Horticulture & Food Processing (Hills), Udyan Bhawan, Chaupatiya, District Almora. The posts were advertised by the U.P. Public Service Commission and the respondent No. 1 applied for the post of Instructor (Cookery) in the scale of Rs. 1600-2660/- in the year 1985-86. The selection in pursuance of the above advertisement took place in the year 1989, where the respondent No. 1 along with respondents No. 2 & 3, was declared successful. The respondent No. 1 was selected for the post of Instructor (Cookery) on 22nd August, 1989.

5. As will appear from the record, the respondent No. 2, namely, Balwant Singh Khetwal was not declared successful by the U.P. Public Service Commission in the main list of selected candidates and his name was in the waiting list of the Instructor (Bakery) and thereafter, he was appointed. He joined after the appointment of respondent No. 1. Similarly, respondent No. 3, namely, Sushil Chandra Dimri was appointed initially in the lower scale of Rs. 1400-2600/-.

6. The grievance of respondent No. 1 was that in the tentative seniority list dated 25th July, 1994, the name of the respondent No. 1 was shown at serial No. 2 while the name of respondent No. 2, namely, Balwant Singh was shown at serial No. 1 and thus the respondent No. 2 was shown senior to the respondent No. 1. The name of respondent No. 3 Sushil Chandra Dimri was shown at serial No. 2 of the employees in the lower scale of Rs. 1400/2600/-.

7. Respondent No. 1, namely, Samual Haq had preferred a representation on 1st August, 1994 claiming that he should be granted seniority w.e.f. 22nd August, 1989 on the post of Instructor, Senior Group 1 and claiming that he should be shown over and above respondent No. 2 Balwant Singh Khetwal as his selection / appointment was made on 22nd August, 1989 while Balwant Singh Khetwal was in the waiting list and not in the main list of the select list and he has been appointed on 25th August, 1989 and therefore, respondent No. 2 remained junior to respondent No. 1. The said representation was rejected. A final seniority list was also issued and in the said seniority list, the position of respondent No. 1 remained the same and he was shown junior to Balwant Singh Khetwal. Immediately, after the impugned seniority list, the respondent No. 1 made a representation on 10th March, 1995, but no orders were passed on the said representation. The respondent No. 1 approached the Public Service Tribunal and his claim petition was allowed.

8. The respondent No. 1 before the Public Service Tribunal has submitted that he has been selected by the U.P. Public Service Commission on 22nd August, 1989 and he is senior to Balwant Singh Khetwal i.e. respondent No. 2. Before the Public Service Tribunal, a written statement was filed by Sri Balwant Singh Khetwal, who was arrayed as opposite party No. 3 before the Tribunal. In his written statement, he has admitted that respondent No. 1, namely, Samual Haq was at serial No. 1 in the select list prepared by the Public Service Commission, but his name was withheld by the Commission although later on his name was cleared by the Commission, itself.

9. Sushil Chandra Dimri i.e. respondent No. 4 has also filed a written statement separately stating therin that he was working in the Department since 1979 in Group II post and was promoted in Group I in the scale of Rs. 1600-2660/- on 26th November, 1987 after completion of 8 years of service and on the other hand, respondent No. 1 had joined in the senior scale on 30th April, 1990. Thus,

respondent No. 4 claimed his seniority on the basis of his promotion made in Group I in the year 1987.

10. Before the Public Service Tribunal, it remained undisputed that respondent No. 1 was selected by the Public Service Commission for the post of Instructor (Cookery) and was placed at serial No. 1 in the merit list as will appear from the order of appointment dated August, 1989, relevant portion of which is quoted below:

मुख्य सूची

1.	श्री सैमुएल हक	(औप0)
2.	श्री प्रभाकर नागू	(औप0)
3.	श्री प्रदीप चन्द्र	(औप0)
4.	श्री धीरेन्द्र राजन	
5.	कुमारी मधु चौधरी	
6.	श्री दयानन्द (पि0 जाति)	(औप0)
7.	श्री भूमेष्वरी (अनु जाति)	(औप0)

प्रतीक्षा सूची

1.	कुमारी बीना अग्निहोत्री	(औप0)

11. It remained undisputed also that Balwant Singh Khetwal was initially in the waiting list of Instructors selected for Bakery by the Public Service Commission. Later on he was also appointed against a clear vacancy.

12. Learned counsel for the petitioners has submitted that respondent No. 1 was selected for the post of Instructor (Cookery) and Balwant Singh Khetwal was appointed as Instructor (Bakery) and there being two separate cadres, hence, respondent No. 1 cannot claim seniority in the Bakery cadre. We are of the view that there is nothing on record to show that the Directorate of Horticulture had created two different cadres for Cookery and Bakery and the seniority list also contains the names of all the employees working in the scale of Rs. 1600-2660/-. It includes the names of the officials working in the Bakery as well as Cookery Division and thus, there is no separate

cadre of Cookery and Bakery. There being only one seniority list for both Cookery and Bakery Division and both being part of the same cadre, the seniority list has to be prepared in accordance with the appointments as mentioned under Rule 5 of the U.P. Government Servant Seniority Rules, 1991. Rule 5 of the said Rules is quoted below:

> "Seniority where appointments by direct recruitment only – Where according to the service rules appointments are to be made only by the direct recruitment the seniority inter se of the person appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the Commissioner or the Committee, as the case may be;
>
> Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final;
>
> Provided further that the person appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of the previous selection."

13. There being no dispute that respondent No. 1 was selected by the Public Service Commission and was placed at serial No. 1 in the merit list and there being also no dispute that Balwant Singh Khetwal was placed in the waiting list, therefore, in view of Rule 5, respondent No. 1 is certainly senior to respondent No. 2, namely, Balwant Singh Khetwal. We therefore find no infirmity in the order passed by the Tribunal treating both as one cadre.

14. Learned counsel for the petitioners has submitted that the respondent No. 1 was given the appointment on 30.04.1990 and as such, the respondent No. 1 was rightly put at serial No. 2. A perusal of the record shows that the appointment was given to the respondent No. 1 in pursuance of the selections made on 22nd August, 1989 and therefore, in pursuance of Rule 5 of the U.P. Government Servant Seniority Rules, 1991, the inter se seniority shall be decided on the basis of the selection as shown in the merit list.

15. Petitioners have submitted that the respondent No. 1 was not entitled for the benefit of Rule 5 of the U.P. Government Servant Seniority Rules, 1991 as the proviso to Rule 5 provides that a candidate recruited directly may loose his seniority, if he fails to join without valid reasons when vacancy is offered to him. We have perused the record and in our opinion, the said selection/ appointment was never cancelled and merely on 20th January, 1990 certificates were required from respondent No. 1 and the said certificates having been furnished by respondent No. 1 on 2nd February, 1990, the Joint Secretary, Lok Seva Ayog has sent a letter to the Director, Udyan Evam Phalupyod for issuing the appointment letter in favour of respondent No. 1. Accordingly, the appointment letter was issued on 17th March, 1990 in favour of respondent No. 1, relevant portion of the same is quoted below:

आदेश

लोक सेवा आयोग, उ0प्र0 इलाहाबाद की संस्तुति के आधार पर निम्नलिखित अभ्यार्थियों की अस्थाई नियुक्ति प्रषिक्षक (कुकरी) के पद पर वेतनमान रू0 1600–50–2300–द0रो0–60–2660 में उनके नाम के सम्मुख इंगित अधिकारी के अधीन की जाती हैः–

क्रम सं0	**अभ्यर्थी का नाम**	**नियुक्ति का सीान**
1.	श्री सैमुएल हक द्वारा–मिस मधु हक बी0–92, सर्वोदय एनक्लेव, नई दिल्ली।	प्रधानाचार्य, राजकीय खाद्य विज्ञान प्रषिक्षण केन्द्र, इलाहाबाद

16. Although, subsequently representations were made with regard to the change of the place, but the same has never affected the initial selection of the respondent No. 1. We are of the opinion that so far as the seniority of respondent No. 1 is concerned, the same cannot be affected merely because there was a delay in submitting the certificates at the instance of the respondent No. 1 and further there was a delay on the part of the respondent No. 1 in getting the joining

due to his representation. The original selection / appointment by the Public Service commission remained unaffected and therefore, as already stated above, respondent No. 1 was entitled for the benefit of Rule 5 of the U.P. Government Servant Seniority Rules, 1991, by which the seniority inter se of the direct recruit has to be decided on the basis of the selection shown in the merit list prepared by the Commission. In this case, respondent No. 1 has never failed to join and therefore, Rule 5 of the U.P. Government Servant Seniority Rules, 1991 is applicable.

17. So far as the respondent No. 1 is concerned, he was initially appointed in the lower pay scale and later on, on 27th February, 1990, he was promoted in regular scale of Rs. 1400-2600/-. On the other hand, respondent No. 1 was appointed by the Public Service Commission directly in the scale of Rs. 1600-2660/- and was placed at serial No. 1. Therefore, there is no occasion to put respondent No. 1 below respondent No. 2 and 3. Further, the question of inter se seniority has not been challenged by respondents No. 2 & 3. The State and the Director of Horticulture have challenged the seniority when in point of fact, the order passed by the Tribunal, so far as it relates to the inter se seniority between respondents No. 1, 2 & 3, has already attained finality and they have also admitted that the respondent No. 1 is senior to them. However, in the present case, we are concerned with regard to seniority by date of recruitment only.

18. The Tribunal has rightly considered that the respondent No. 1 is senior to respondents No. 2 & 3. The seniority list by which respondent No. 1 was put below Balwant Singh Khetwal has already been quashed,. As such, we do not find any infirmity in the order passed by the Public Service Tribunal so as to interfere under Article 226/227 of the Constitution of India.

19. Consequently, the writ petition lacks merit and is, hereby, dismissed.

(Rajesh Tandon, J.) **(V.S. Sirpurkar, C.J.)**

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